

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 15965 of 2007(A)

PETITIONER:

TCS TEXTILES PVT. LTD.,
558-560, OPPANAKKARA STREET,
COIMBATORE-641 001
HAVING ITS OFFICE AT:1-B PAUL ABRAVO RESIDENCY
(RDS), CHITTOOR ROAD, KACHERIPPADY, KOCHI 682018
REPRESENTED BY ITS DULY AUTHORISED PROJECT MANAGER

BY ADV. SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE

RESPONDENTS:

1. STATE OF KERALA, REP. BY THE SECRETARY,
TO THE LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE CORPORATION OF COCHIN,
REPRESENTED BY THE SECRETARY, ERNAKULAM
KOCHI 11.
3. THE TOWN PLANNING OFFICER, CORPORATION
OF COCHIN, KOCHI 11.

R1 BY GOVT. PLEADER SRI. K.J. MOHAMMED AN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.M.JOSEPH, J.

WP.(C) No.15965 of 2007

Dated this the 30th day of May, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner purchased a property having an extent of 41 cents after spending huge amount for the purpose of starting textile centre in the name 'The Chennai Silks'. They filed application for approval of building plan dated 26.4.2006. They approached this court on the basis of Ext.P2 certificate, which speaks about probable starting of Metro Rail. Petitioner had approached this court by filing W.P.(C) No.13205 of 2007, in which an interim order as Ext.P3 was passed, which reads as follows:

“Standing counsel takes notice for respondents.

Petitioner is denied building permit for construction of building on the side of M.G.Road, Ernakulam on the ground that land is required for Metro Rail. However, if petitioner is willing to forego compensation for building, I see no reason why respondent should deny permission for construction. Accordingly 1st respondent is directed to consider and grant conditional permission to construct the

building subject to Building Rules on condition that petitioner will not be paid any compensation for the building in the event of the acquisition of the same for Metro Rail and on petitioner furnishing affidavit or relinquishing claim for compensation for the building if any steps are taken for acquisition of the land for Metro Rail within 18 months from today.”

Petitioner filed Ext.P4 also, which resulted in Ext.P5 dated 7.5.2007. Petitioner relies on Ext.P6 judgment. In Ext.P5 what is stated is that FAR comes to 3.97 and under the Detailed Town Planning Scheme the FAR can only be 2 in the M.G.Road. There are certain other conditions also, which according to the respondent Corporation have to be satisfied. This court in Ext.P6 took the view that in regard to application for permit submitted prior to the date of the Government Order referred to therein, the provisions contained in the Kerala Municipal Building Rules may govern the situation. This court held as follows:

“If the petitioner's application for building permit was actually received by the Corporation prior to

22.8.2006, then the Corporation is bound to consider that application following the Floor Area Ratio provided by the Kerala Municipality Building Rules, 1999 and not the FAR permitted under the Structure Plan of 1991.”

Petitioner relies on the same. I heard learned counsel for the petitioner, learned Government Pleader and learned counsel appearing for the Corporation.

2. It is submitted by the learned Government Pleader that Ext.P6 judgment has not been carried in appeal, according to his information. Learned counsel appearing for the Corporation would submit that even if the matter is reconsidered and if permit is granted, it will be subject to the condition that it will have to be demolished unconditionally without any compensation and an affidavit in those lines will have to be provided by the petitioner. It is submitted that the petitioner has already given such an undertaking. In such circumstances petitioner should also be given the benefit of Ext.P6 judgment.

Accordingly Ext.P5 in so far as it rejects the application on the ground of FAR is quashed and the second respondent is directed to consider the matter and take a decision in accordance with law within a

period of one month from the date of receipt of a copy of this judgment. I make it clear that the other reasons for passing Ext.P6 will hold good.

The writ petition is disposed of as above.

(K.M. JOSEPH, JUDGE)

sb